STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois-American Water Company	)	
	)	02-0517
	)	
Petition for consent and approval of an agreement with American Water Resources, Inc. an "Affiliated Interest" under Section 7-101 of the Illinois Public Utilities Act as, amended.	))))	

INITIAL BRIEF ON REOPENING OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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The Staff of the Illinois Commerce Commission ("Staff") hereby submits its Initial Brief on Reopening in this matter.

I. PROCEDURAL HISTORY

On August 9, 2002 Illinois American Water Company ("IAWC") filed a petition for consent and approval of an agreement with American Water Resources, Inc. ("AWR") an affiliated interest under Section 7-101 of the Illinois Public Utilities Act ("PUA") as amended. Subject to Illinois Commerce Commission (Commission) approval, IAWC and AWR entered into an agreement for support services whereby IAWC will perform certain services for AWR in connection with AWR offering service line protection to IAWC's customers. On October 15, 2002, IAWC filed an amended petition and an amended agreement for support services ("the AA"). On December 3, 2002 the record was marked heard and take by the Administrative Law Judge ("ALJ").

On December 30, 2002 the Commission on its own motion entered an order to grant the reopening of the record and to take additional evidence. The Commission directed the parties to address the following questions:

1. What consumer groups and what parties in the affected trades, if any, were contacted regarding this program.

2. Did (do) those parties have an opinion on the Company's proposal?

3. How does this proposal compare and contract with ICC approved programs in other industries (e.g. the linebacker program in telecom and in consideration of the joint marketing provisions of the affiliated rules for electric and gas companies?

Subsequent to the reopening of the record, the Citizens Utility Board ("CUB") and the People of the State of Illinois ("AG") intervened. A prehearing conference was held on January 13, 2003. On March 11, 2003 Staff filed the direct testimony on Reopening of David A Borden and CUB filed the direct testimony of David Kolata. On March 17, 2003 IAWC filed a motion to strike portions of the direct testimony on reopening of Staff witness Borden. On March 20, 2003 Staff filed a response to IAWC's motion and IAWC filed a reply to Staff's response on March 25, 2003. On March 26, 2003 Staff and CUB filed rebuttal testimony of David A Borden and David Kolata, respectively. On March 27, 2003 the ALJ denied IAWC's motion to strike testimony. On April 4, 2003 IAWC filed the rebuttal testimony of Frederick L. Ruckman. A hearing was held on April 21, 2003. At the conclusion of the hearing the record was marked heard and taken and a briefing schedule was set.

II. ARGUMENT

A. Introduction

The Commission has an opportunity in this case to make an important policy statement for all utilities that operate under a holding company structure and that provide services to unregulated affiliates through the use of affiliate agreements. Although the utility in the instant case is compensated by its affiliate for services rendered, Staff argues that this compensation is not enough to conclude that the agreement is in the public interest. The utility could have provided the service without the involvement of the affiliate and ratepayers would have benefited to a greater degree had the utility provided the service directly. In Staff's view, the affiliate transaction in the instant proceeding is another example of utility personnel and facilities being exploited by the holding company structure that is prevalent across all utility industries. Such affiliate transactions cannot credibly be argued as arms length transactions because of the affiliate relationship of the parties. Staff cannot properly analyze the program in question and the compensation for the services provided by the utility because the affiliate no longer has any information that sets forth an economic analysis of the program. The utility offers "benchmark" comparisons regarding the compensation that its affiliate utilities receive in other state jurisdictions for the same services provided to the same unregulated affiliate. Such "benchmarks" are meaningless because they result from the same intertwined relationship that exists in the instant proceeding. Staff asks that the Commission put affiliate transactions to the appropriate standard and evaluate them according to market based data that is available for similar services and that the Commission hold to that standard even when the utility holding company structure dangles a tiny carrot as a benefit for ratepayers. Staff asks that the Commission fully consider the important policy that will result from adopting Staff's position in this proceeding. The Commission must favor the greater good of the public interest against any utility threat to "pick-up its toys" and "go home" should the Commission have the "audacity" to suggest that the affiliate derives too great of a benefit from the transaction in question at the expense of ratepayers. Staff's primary recommendations send a signal to Utilities that utility assets and personnel are not available to be fully exploited by unregulated affiliates, which clearly is in the public interest.

B. Background and Summary of Staff's Primary Recommendations

Staff witness, David A. Borden was assigned to provide a response to the Commission's third question:

> **(3) How does this proposal compare and contrast with ICC approved programs in other industries (e.g. the LINE-BACKER program in telecom and in consideration of the joint marketing provisions of the affiliate rules for electric and gas companies)?**

As a result of Mr. Borden's review of the Water Line Protection Program ("WLPP") proposed by IAWC and its affiliate, AWR, and his review of similar programs offered by other Illinois utilities and their affiliates, Mr. Borden provided several recommendations concerning the WLPP, as proposed by IAWC and AWR (jointly referred to as "the Companies"). (ICC Staff Exhibit 2.0, p. 3)

Mr. Borden's primary recommendations are that IAWC's proposal to participate in the WLPP, as part of the AA, be rejected because it does not satisfy the public interest standard, as set forth in Section 7-101 of the Illinois Public Utilities Act ("the Act"), and that the Commission reject the proposed AA between AWR and IAWC because the AA does not identify the services that will be provided under its umbrella terms, and absent the details of such services the Commission should not conclude that their provision is in the public interest. (ICC Staff Exhibit 2.0, pp. 4-5).

Regarding Staff's first primary recommendation, the public interest standard is not met because IAWC's proposal fails to appropriately compensate ratepayers for the net income associated with the WLPP that is made possible because of IAWC's status as a public utility. Although IAWC does not propose to offer the WLPP directly and Staff does not recommend that IAWC provide the WLPP directly, IAWC could provide the WLPP instead of its affiliate, AWR. If IAWC provided the WLPP directly, it could treat the net income associated with the WLPP above the line for ratemaking purposes. If IAWC were to provide the WLPP and treat the net income above the line, then IAWC would benefit from the WLPP via regulatory lag in determining rates. (ICC Staff Exhibit 2.0, p. 4)

Regarding Staff's second primary recommendation, Although the Commission's approval of agreements may be warranted for services that are specifically identified, the Commission should reconsider its approach to the approval of general service agreements that do not set forth the details of the services to be provided between the utility and its affiliate. Some of the services intended to be provided under general service agreements should not be approved by the Commission in advance because the Commission may find the specific details of the services objectionable. In addition, conditions in the industry may change over time such that what was once thought to be in the public interest can turn out to be something the Commission would have rejected had it anticipated a greater number of potential services under the general agreements. By approving general service agreements the Commission is saying that all of the services provided under those agreements are in the public interest, and it is not possible for the Commission to reasonably reach this conclusion without knowing all of the intended uses of the agreements and the details of the services provided.

C. The Basis for Staff's Primary Recommendations

The basis for Staff's primary recommendations is that a relatively small portion of the net income associated with the WLPP accrues to ratepayers, and if IAWC were to provide the service without the involvement of AWR, then ratepayers would derive a greater benefit from the WLPP. (ICC Staff Exhibit 2.0, pp. 15-16)

Under IAWC's proposal, IAWC ratepayers are allocated half of IAWC's 15% mark-up on services that it provides AWR for the WLPP. Staff expects that IAWC costs will be minimal and hence the 15% mark-up will be minimal. If IAWC were to provide this service directly, without AWR, then the mark-up that AWR stands to receive under the current proposal would be shared with ratepayers directly by IAWC. (ICC Staff Exhibit 2.0, p. 16)

If IAWC were to provide the WLPP directly, ratepayers would stand to share in the net income of the WLPP according to at least a 50/50 split, if the Commission adhered to prior rulings involving IAWC that approved a 50/50 sharing of non-utility revenues, and merger savings between IAWC and ratepayers. (See the Orders in Docket No. 95-0076 & 00-0476, respectively.) While Staff disagrees with the prior Commission determinations and believes that a 50/50 sharing of the entire net income associated with the WLPP is less appropriate for this service than it was for the non-utility revenues and merger savings, a 50 percent sharing would appear to be a minimum share for customers. (ICC Staff Exhibit 2.0, p. 16)

Staff believes that IAWC ratepayers should be given a larger share of the net income from the WLPP than the 50/50 split that the Commission previously approved for non-utility revenues and merger savings because IAWC could provide the WLPP directly to customers without AWR. One possible reason for AWR's involvement is to share less of the net income from the WLPP with ratepayers. That is to say, what could have been a 50/50 split of the entire net income from the WLPP is now a 50/50 split of 15% over IAWC's cost of providing the service to AWR. Clearly, a 50/50 split of 15% over IAWC's costs must be less than a 50/50 split of the entire net income associated with the WLPP. Thus, IAWC's proposal hardly seems equitable given that the service is closely related to and derived from IAWC's provision of utility service. For example, AWR benefits from IAWC's use of utility personnel who repair leaks and read meters by avoiding the cost of hiring full-time employees to provide the services for the WLPP. Although IAWC charges the fully distributed cost of providing these services to AWR, such costs are likely to be minute because they are determined primarily by the amount of time the employee spends performing utility work versus the amount of time that they spend providing services for the WLPP. Based upon IAWC's description of these services, it is hard to believe that an IAWC employee would spend any significant time in their provision of services for the WLPP. AWR benefits from the access to and use of customer information that is the result of the provision of utility service without having to employ customer service and administrative employees to acquire and record such information on its own. AWR benefits from avoiding the cost of sending out its own bill to customers for the WLPP. Finally, AWR benefits from the joint marketing of the WLPP with IAWC and thus benefits from IAWC's brand name and reputation that was built by providing service as a public utility. Staff does not know the economic value of IAWC's brand name and reputation, but in terms of marketing the AWR name and reputation to utility customers, AWR could not duplicate the value of the IAWC brand name for the WLPP. (ICC Staff Exhibit 2.0, pp. 16-18)

Staff believes that IAWC can provide the WLPP instead of AWR because as the WLPP is proposed, IAWC provides its endorsement and brand name to AWR to market the service to customers, but IAWC could endorse and market the service without AWR. The big difference being that when AWR is not involved the Commission would not have to calculate the worth of IAWC's brand name and determine whether AWR is charged appropriately for its use. IAWC provides customer account information to AWR and such information could be used by IAWC to identify customers participating in the WLPP for the same cost that IAWC proposes to provide the service to AWR. IAWC proposes to provide the use of its bill to collect payment from customers on behalf of AWR, but IAWC could similarly use its bill to collect payment for its provision of the WLPP at no additional cost. Both IAWC and AWR use the same billing system provided by an affiliated service company and that would continue with IAWC providing the service directly. IAWC proposes the use of its utility personnel to respond to repair calls and identify whether a condition exists that AWR is responsible to repair, but IAWC utility personnel could do the same for IAWC for the same minimal cost. IAWC could contract for the licensed plumbers to perform the actual repair work that is currently contemplated by AWR and it is unlikely that the costs would be different. In terms of actual experience in providing these types of customer repair services, utilities provide all of the work in the telecommunications industry and most of the work for the one gas pipe repair service that offered in Illinois. For all of these reasons, Staff concludes that the WLPP is closely related to and derived from utility service and could be provided directly by IAWC for the same or very similar costs versus AWR. (ICC Staff Exhibit 2.0, pp. 18-19)

Staff's remaining primary recommendation is that the Commission should reject the AA between AWR and IAWC. The basis for this primary recommendation is that the AA does not identify the services that will be provided under its umbrella terms, and absent the details of such services the Commission should not conclude that the provision of unknown services is in the public interest. In fact, had the WLPP not been identified as part of this petition, and the Commission approved the AA, Staff believes that the Commission could have unknowingly approved services, such as the WLPP, that would not be in the public interest. (ICC Staff Exhibit 2.0, p. 19)

The rejection of the AA because it is not specific enough is an important policy statement for the Commission in that the public interest shall come before utility attempts to mask future transactions that would not satisfy the public interest standard if they were otherwise exposed to the light of day. Staff believes that the Commission should take a fresh approach to its review and approval of general service agreements for all utilities such that greater specificity regarding the proposed services is required before the Commission considers approval. (ICC Staff Exhibit 2.0, pp. 19-20)

Although the Commission's approval of agreements may be warranted for services that are specifically identified, the Commission should reconsider its approach to the approval of general service agreements that do not set forth the details of the services to be provided between the utility and its affiliate. Some of the services intended to be provided under general service agreements should not be approved by the Commission in advance because the Commission may find the specific details of the services objectionable. In addition, conditions in the industry may change over time such that what was once thought to be in the public interest can turn out to be something the Commission would have rejected had it anticipated a greater number of potential services under the general agreements. By approving general service agreements the Commission is saying that all of the services provided under those agreements are in the public interest, and it is not possible for the Commission to reasonably reach this conclusion without knowing all of the intended uses of the agreements and the details of the services provided. (ICC Staff Exhibit 2.0, p. 20)

D. Summary of Staff's Secondary Recommendations

If the Commission does not accept Staff's primary recommendations, then Staff proposes the following changes to the WLPP as Staff's secondary recommendations:

> 1) IAWC shall provide the same services, under the same terms and conditions that it provides to AWR, to non-affiliated entities who seek to provide services similar to the WLPP;
>
> 2) the 15% mark-up over the fully distributed cost that IAWC receives, for services provided to AWR, should be increased to the mark-up that IAWC receives for the provision of customer account information to municipalities for the purpose of billing for sewer service;
>
> 3) 100% of the mark-up that IAWC receives, regardless of whether the Commission adopts Staff's proposed mark-up or IAWC's 15%, should be treated above the line for ratemaking purposes to the benefit of ratepayers;
>
> 4) The approval of the AA should be limited to the provision of the WLPP; and,
>
> 5) The use of IAWC's letterhead and IAWC's endorsement of the WLPP in letters to customers should be prohibited. (ICC Staff Exhibit 2.0, p. 21)

E. The Basis for Staff's Secondary Recommendations

Staff believes that IAWC should provide the same services, under the same terms and conditions that it provides to AWR, to non-affiliated entities who seek to provide services similar to the WLPP, because by doing so IAWC is less likely to subsidize its affiliate in the use of IAWC's personnel, services, and information in the provision of non-utility service, and IAWC can maximize the value of the personnel, services and information to the benefit of ratepayers. For example, if IAWC were required to provide similar services to unaffiliated entities, then the terms and conditions to provide those services are more likely to result from arms length transactions versus terms and conditions negotiated with an affiliate. The Commission can use the terms and conditions with unaffiliated entities as an indication whether IAWC subsidizes its affiliate. It is not in the public interest for IAWC to subsidize the cost of the services that it provides to its affiliate because such subsidization means that rates to ratepayers are higher than they might be otherwise. (ICC Staff Exhibit 2.0, pp. 21-22)

As long as IAWC receives the same mark-up, utility service is not impaired, and ratepayers benefit from the net income generated by the services, then the Commission should require that IAWC provide the same services that it provides to AWR to non-affiliated entities. Such treatment would be in the public interest because, to the extent other providers began offering the service to customers and IAWC's net income associated with the provision of these services increased, then the sharing of a larger amount of net-income associated with IAWC's provision of the service would benefit ratepayers and reduce the over all cost of utility service. (ICC Staff Exhibit 2.0, p. 22)

Staff believes that the 15% mark-up over the fully distributed cost that IAWC receives, for services provided to AWR, should be increased to the mark-up that IAWC receives for the provision of customer account information to municipalities for the purpose of billing for sewer service because the 15% mark-up is not the result of arms length negotiations. That is to say, since IAWC and AWR are affiliates, the Commission should assume that the negotiations between IAWC and AWR are not at arms length. Rather than rely on the assurances of affiliated companies who face an incentive to lower the mark-up, the Commission should rely on the contracts that IAWC has negotiated to provide similar services with unaffiliated entities and the resulting profit margins associated with those services. IAWC provides customer account information to various municipalities so that the municipalities can bill those customers for sewer service. IAWC meter reading and service employees are used to provide this service in much the same manner as they are used by IAWC to provide similar services to AWR. In their response to Staff Data Request DB-2.1, dated March 4, 2003, IAWC indicates that the revenues associated with this service are $152,253, and the expenses are $15,058, for the test year in IAWC's ongoing rate case, Docket No. 02-0690. Staff concludes from this data that the net-income from these services is $137,195. The net-income earned by IAWC on these services is not based on a percentage mark-up over cost, but on a negotiated per customer charge for reading meters that is set forth in the contracts. The net-income for the test year constitutes a 911% margin on the services provided. Thus Staff recommends that the Commission replace the 15% mark-up over the services that IAWC will provide to AWR with a 900% mark-up over IAWC's fully distributed costs of providing those services to AWR. (ICC Staff Exhibit 2.0, pp. 22-23)

Staff believes that all of the mark-up that IAWC receives above IAWC's costs of providing services to its affiliate for the WLPP should be treated above the line for ratemaking purposes to the benefit of ratepayers. Staff's 100% sharing proposal is an attempt to re-capture some of the gain that might otherwise have gone to ratepayers had IAWC proposed to offer the WLPP directly. If IAWC were to provide the WLPP directly and followed the same proposal in this proceeding to share the mark-up above IAWC's cost of providing services to AWR 50/50 with ratepayers, then ratepayers would have received a minimum of 50% of the net income associated with the WLPP. Undoubtedly, 50% of the entire net income associated with the WLPP is greater than 15% above IAWC's cost of providing services to AWR. (ICC Staff Exhibit 2.0, pp. 23-24)

Staff concedes that it is possible that a 100% sharing for ratepayers of a 900% mark-up above IAWC's cost might result in the WLPP being uneconomical to AWR. However, Staff was unable to evaluate that possibility because IAWC claims that the economic analysis, on which the decision to implement the WLPP was based, no longer exists. (ICC Staff Exhibit 2.0, p. 24) In its response to a Staff Data Request on this matter, dated March 7, 2003, IAWC states:

> The program was approved by the then President of AWR, Ray Lee. Mr. Lee has since retired and to our knowledge no economic analysis has been retained. (ICC Staff Exhibit 2.0, p. 21)

Since Staff does not know the economic basis for implementing the WLPP, and AWR no longer has this information, Staff cannot say whether its proposal would impair the WLPP such that AWR would no longer find it profitable to offer to customers. However, the Commission should not reject Staff's recommendation on this possibility because to do so would further encourage Utilities and their affiliates to destroy information that is pertinent to a Commission decision or simply argue that they do not know the whereabouts of the requested information. IAWC now claims that the program will be uneconomical if Staff's recommendation is adopted but IAWC has provided no evidence to substantiate this claim.

Staff believes that the approval of the AA should be limited to the provision of the WLPP. The AA does not identify the services that will be provided under its umbrella terms, and absent the details of such services the Commission should not conclude that the provision of unknown services is in the public interest. In fact, had the WLPP not been identified as part of this petition, and the Commission approved the AA, Staff believes that the Commission could have unknowingly approved services, such as the WLPP, not in the public interest. Although the Commission's approval of agreements may be warranted for services that are specifically identified, the Commission should reconsider its approach to the approval of general service agreements that do not set forth the details of the services to be provided between the utility and its affiliate. Some of the services intended to be provided under general service agreements should not be approved by the Commission in advance because the Commission may find the specific details of the services objectionable. In addition, conditions in the industry may change over time such that what was once thought to be in the public interest can turn out to be something the Commission would have rejected had it anticipated a greater number of potential services under the general agreements. By approving general service agreements the Commission is saying that all of the services provided under those agreements are in the public interest, and it is not possible for the Commission to reach this conclusion reasonably without knowing all of the intended uses of the agreements and the details of the services provided. (ICC Staff Exhibit 2.0, pp. 23-24)

Staff believes that the use of IAWC's letterhead, and IAWC's endorsement of the WLPP in letters to customers should be prohibited for the following reasons: 1) concerns regarding the potential subsidization of IAWC's affiliate, AWR; and 2) the lack of IAWC's substantiation of its endorsement of the WLPP.

IAWC endorses the WLPP in IAWC's letter that markets the program to customers. (IL-AWC Exhibit 2.0) The Commission does not know the value of IAWC's brand name and reputation, and absent similarly negotiated services with an unaffiliated entity, the Commission does not have a reasonable proxy for IAWC's brand name and reputation. Thus, the Commission does not know whether the use of IAWC's brand name and reputation, under the terms of the WLPP, constitutes a subsidy to AWR. Since it is not in the public interest for the Commission to allow IAWC to subsidize services provided to AWR, Staff recommends that the Commission prohibit IAWC's endorsement and joint marketing of the WLPP. (ICC Staff Exhibit 2.0, pp. 25-26)

In addition to subsidy concerns, Staff is concerned about IAWC's endorsement of a service that benefits from IAWC's provision of utility service when it is not known whether the WLPP provides an economic benefit to customers. Since Staff has not reviewed the economic analysis of the WLPP, because it is not available from AWR, Staff is unable to provide an opinion as to whether the service is likely to be beneficial to customers. Staff does not understand how IAWC can endorse a program under such circumstances. As such, Staff is opposed to the Commission authorizing IAWC's endorsement and marketing of the WLPP, which could be an unnecessary purchase for the vast majority of customers. That is to say, it is not in the public interest for the Commission to authorize IAWC to provide potentially inaccurate or misleading information to customers in its marketing of the WLPP. It is Staff's belief that IAWC may sacrifice a reasonable description of the WLPP to its customers at the direction of its affiliate that stands to profit from IAWC's endorsement.

III. STAFF'S RESPONSE TO THE COMMISSION'S THIRD QUESTION.

As previously discussed, Staff witness, David A. Borden, provided a response to the Commission's third question:

(3) How does this proposal compare and contrast with ICC approved programs in other industries (e.g. the LINE-BACKER program in telecom and in consideration of the joint marketing provisions of the affiliate rules for electric and gas companies)?

A. Comparison of WLPP to other Illinois Commerce Commission Approved Programs

After questioning representatives of the following companies: SBC Communications ("SBC"), Verizon Communications ("Verizon"), Commonwealth Edison Company ("ComEd"), Illinois Power ("IP"), AmerenCIPS, AmerenUE, AmerenCILCO, MidAmerican Energy Company ("MEC"), Nicor Gas ("Nicor"), Peoples Gas ("Peoples"), and North Shore Gas ("North Shore"), Staff identified three utilities that offer a service similar to the WLPP, either directly or in conjunction with an affiliate. The three utilities are SBC, Verizon, and Nicor. It is Staff's understanding, from discussions with representatives of Peoples Gas and North Shore Gas, that North Shore Gas will offer a customer owned gas pipe repair service at some point in 2003 as a pilot program and the program will subsequently be offered in the Peoples Gas service area. A discussion of the specifics of the repair service programs that Staff identified is set forth below. (ICC Staff Exhibit 2.0, pp. 6-7)

1. SBC LINE-BACKER

The SBC repair service is referred to as “LINE-BACKER.” LINE-BACKER is provided directly by the utility, SBC, with no involvement from an affiliate. It is Staff’s understanding, from discussions with ICC Staff and SBC representatives, that LINE-BACKER is an unregulated non-telecom service, and as such, there are no Commission rulings regarding the service. For a monthly fee that is billed as a separate line item on the utility bill, SBC will cover the cost of repairs for customer owned wiring at their residence and utility personnel perform the repair work. Since SBC is under alternative regulation there is no sharing or above/below the line treatment of SBC’s costs and revenues for ratemaking purposes. SBC markets the service primarily through customer service calls, the SBC web site, and occasionally through bill inserts. If a customer pays a portion of their total bill in a given month, then SBC applies that amount first to recover the cost of regulated service and second to unregulated services. (ICC Staff Exhibit 2.0, pp. 6-7)

LINE-BACKER is very similar to the WLPP in that they insure customers against the cost of repairs to customer owned property that one might classify as the “last inch” required to deliver utility service to the residence. The main differences are that SBC provides the service directly and there are no joint marketing issues with an affiliate as a result. In addition, the ratemaking treatment for the LINE-BACKER service is not an issue because of the alternative regulation of SBC. (ICC Staff Exhibit 2.0, p.8)

2. Verizon's Customer Owned Wiring and Jack Repair Service

It appears that Verizon's coverage is similar to that offered by SBC, with the exception that Verizon offers two choices for customers, i.e., the standard plan and the alternative plan. It appears that the main differences between the two plans are that the standard plan requires a 30 day waiting period before coverage becomes effective and the latter is not required under the alternative plan. In addition, the standard plan does not appear to impose minimum terms and early cancellation fees, both of which apply under the alternative plan. Under both plans, Verizon provides the service as a non-regulated telecom service with no affiliate involvement. Verizon employees perform all of the work and the monthly premium is included as a separate line item on the customer's bill. As for ratemaking treatment, from discussions with ICC Staff and Verizon representatives, there have been no recent determinations on this matter but the service is most likely treated below the line. If a customer pays a portion of their total bill in a given month, then Verizon applies that amount first to recover the cost of regulated service and second to unregulated services. (ICC Staff Exhibit 2.0, pp. 8-9)

Verizon's customer owned wiring and jack repair service is very similar to the WLPP in that they insure customers against the cost of repairs to customer owned property that one might classify as the "last inch" required to deliver utility service to the residence. The main differences are that Verizon provides the service directly and there are no joint marketing issues with an affiliate as a result. The ratemaking treatment for the Verizon service is below the line so ratepayers do not share in the economic benefits from the service to the extent that they would under the WLPP. (ICC Staff Exhibit 2.0, p. 8)

3. Nicor's Customer Owned Piping and Repair Service

The Nicor service is provided by Nicor's affiliate, Nicor Services. Nicor Services pays for the cost of repairs to customer owned piping in exchange for a monthly premium from the customer. The cost of the service is collected via the Nicor utility bills. Nicor indicates that they do not joint market this service with their affiliate, but the affiliate is permitted, as is any non-affiliated entity, to pay for the use of monthly bill inserts to send to customers. Nicor indicates that if a customer pays a portion of their total bill in a given month, then Nicor applies that amount first to recover the cost of the affiliate's service and second to Nicor's utility services, unless otherwise requested by the customer. However, Nicor also indicated that this policy would change in the very near future such that when a customer pays a portion of their total bill in a given month, then Nicor will apply that amount first to recover the cost of Nicor's utility service and second to the affiliate's services. Nicor's utility repair personnel respond to all calls regarding suspected piping leaks within the customer premises. Nicor's utility repair personnel would know in advance of arriving whether the customer purchased the repair service from Nicor Services. If the repair work required was not significant, Nicor utility repair personnel perform the repair and bill Nicor Services for the work. If the repair work is significant, Nicor utility personnel perform the work necessary to ensure the safety of the premises and contact Nicor Services to request that Nicor Services perform the more extensive repairs. The cost of the service provided by Nicor to Nicor Services is the fully distributed cost per the terms of the Operating Agreement between Nicor and its affiliated entities that was approved by the Commission on September 26, 2001, in Docket No. 00-0537. (ICC Staff Exhibit 2.0, pp. 8-9)

Overall, Staff concludes that there are too many aspects of each program to simply state that the WLPP is better or worse than the others. Conceptually, the WLPP insures against an event that is likely to be more costly than the cost of repairing customer owned wiring and jacks, and thus might be viewed as providing a greater expected economic benefit to customers than those services offered by SBC and Verizon. The repair service offered by Nicor Services is for events that could potentially be hazardous to customer safety and result in greater property damage than the WLPP, and customers may view this service as of greater benefit to them than the WLPP. Since the services provided are closely related to and derived from utility service (even in the case of Nicor Services, the Nicor utility personnel perform the predominance of the repair work), Staff would prefer that the service be provided by the utility. However, IAWC is not proposing to provide the WLPP directly and Staff is not recommending that the Commission order IAWC to offer the WLPP. (ICC Staff Exhibit 2.0, pp. 10-11)

B. Electric and Gas Affiliate Rules and the WLPP

The joint marketing provisions of the affiliate rules for electric companies are applicable to an electric utility and its affiliated interests in competition with an Alternative Retail Electric Supplier ("ARES".) (83 Ill Adm. Code 450.25(a)) The joint marketing of a service that is similar to the WLPP, by an electric utility and its affiliate, would not be prohibited by Section 450.25(a) unless the affiliate were in competition with an ARES. (Section 450.25(a)) (ICC Staff Exhibit 2.0, p.12)

The joint marketing provisions of the affiliate rules for gas companies are applicable to a gas utility and its affiliated interests in competition with an Alternative Retail Gas Supplier ("ARGS".) (83 IL Adm. Code 550.30(a)) The joint marketing of a service that is similar to the WLPP, by a gas utility and its affiliate, would not be prohibited by Section 550.30(a) unless the affiliate were in competition with an ARGS. (ICC Staff Exhibit 2.0, p.12)

Staff in its testimony used the phrase alternative retail water suppliers ("ARWS") however Staff used the term to be consistent with the parlance of the electric and gas regulatory rules and not to suggest that there is retail competition for water supply in the water industry in Illinois. Staff knows of no retail competition in the water industry in Illinois, except for some limited forms of customer bypass, and the use of eminent domain powers by municipal governing bodies to take over the assets of privately owned water utilities. Since the electric and gas affiliate rules prohibit joint marketing with an affiliate in competition with other retail suppliers, and Staff sees no evidence of retail competition in the water industry, Staff does not think it would be appropriate for the Commission to apply a standard consistent with the electric and gas affiliate rules regarding joint marketing to the WLPP in this instance. (ICC Staff Exhibit 2.0, pp.12-13)

Staff believes that it is possible that other potential providers of the service offered by AWR would like to have the same access to IAWC's customer information, use of the utility bill, and utility personnel as IAWC intends to provide to AWR, and the same holds true for other providers of this service in the electric and gas industries. Staff assumes that this is why the Commission ordered that affected trades be contacted, and why the Commission solicited the opinion of affected trades on the WLPP on reopening. Staff with its more detailed knowledge of the WLPP is not surprised that the affected trades expressed no opinion on the WLPP because the service is akin to insurance. Under the WLPP, in exchange for monthly or annual premiums today, the customer is promised that the customer's future liability for repair work (the equivalent of a financial payment made directly to the customer) will be covered by AWR if repairs are needed in the future. In Staff's opinion, it is unlikely that a customer would pay premiums today, in exchange for future pay-outs from a plumbing contractor (affected trade group) because there may be considerable uncertainty as to whether the plumbing contractor would be in business in the future when the customer needs repair work performed versus the water utility or its affiliate. If a financially sound company like a water utility, its affiliates, or an insurance company offered something like the WLPP, then it would be more likely to attract customer interest than a trade group. (ICC Staff Exhibit 2.0, pp. 13-14)

Staff believes that any entity desiring to offer a service similar to the WLPP should be allowed the same access to IAWC's services, as IAWC provides AWR, and at the same terms. As long as IAWC receives the same mark-up, utility service is not impaired, and ratepayers benefit from the net income generated by the services, then the Commission should require that IAWC provide the same services that it provides to AWR to non-affiliated entities. Such treatment would be in the public interest because, to the extent other providers began offering the service to customers, then the sharing of net-income associated with IAWC's provision of the service would benefit ratepayers and reduce the over all cost of utility service. (ICC Staff Exhibit 2.0, p.14)

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the Staff of the Illinois Commerce Commission respectfully requests the Commission to reject the proposed AA as not in the public interest. In the event that the Commission does not reject the AA, then Staff recommends that the Commission adopt Staff's Secondary Recommendations, as described herein.

Respectfully submitted,

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